"The correct view of the effect of such a transaction in the Federated Malay States (and therefore in Johore) appears to be that, not being recognized by the law relating to registration of title, it can operate as a contract and may therefore give rise in appropriate circumstances to a decree for specific performance against the proprietor of the land but cannot create anything in the nature of an incumbrance on the land itself."

In the New South Wales case of *Josephson* v. *Mason*[7], where the facts were not dissimilar to those of the present case except that the plaintiff in that case was the landlord and he was suing for ejectment, it was said by Cullen C.J. :—

"It was not disputed, and at this day it clearly could not be, that a contract for the granting of a lease would be binding upon the registered proprietor who made it, and that the Act would not stand in the way of a full recognition of such a contract, and the usual equitable incidents attached to it."

Again in the Perak case of *Bachan Singh* v. *Mahinder Kaur*[8] I myself made the following observations from which, on reflection, I see no reason to depart :—

"To my mind, many of the difficulties which appear to arise in these cases would not arise if we were to bear in mind throughout the distinction between rights *ad rem* or personal rights and rights *in rem* or real rights. Where there is a valid binding contract for the sale of land, the purchaser, when he has performed his side of the contract, acquires a right *ad rem* which is also a right *in personam*. In other words, he acquires a right to the land as against the vendor personally but not good against the world as a whole and, in due course, that right can become a real right good against the world as a whole on registration in accordance with the Land Code."

That was a case where it was said that a registrable transfer in the statutory form must be treated as *prima facie* evidence of an antecedent oral contract to sell the land. In the present case, there is no question of a registrable instrument in the statutory form and of course there is no question of an oral contract. There is, however, a written contract and in my view it is a binding contract. It is a contract with which the appellant has failed to comply and of which she is clearly in breach. In the circumstances, in my view, the respondents are entitled to their remedy.

I would dismiss the appeal with costs and make the necessary order for payment out of the deposit to the respondents against their taxed costs.

With regard to the money in Court in Originating Summons No: 311 of 1959, it is not open to this Court to make any order in the present proceedings. It would, however, seem to follow from what I propose that judgment will ultimately be entered for the present respondents for an amount which must be something more than the amount in Court and that being so, given good sense on the part of the parties, the disposal of the money in Court should present no difficulty.

Hill J.A.: I have had the advantage of reading the judgment of the learned Chief Justice, with which I agree and have nothing to add.

Good J.A.: I have had the advantage of reading the judgment of the learned Chief Justice. I am in complete agreement with it and have nothing of my own to add. I too would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Chang Min Tat; Hogan, Adams & Allan.*

TAN BUCK TEE v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good JJ.A.) March 8, 1961]

[K.L. — F.M. Criminal Appeal No. 1 of 1961]

Criminal Law and Procedure — Murder trial — Summing-up — Misdirection — Whether substantial miscarriage of justice — Penal Code, ss.299 and 300.

Appeal — Power of Court of Appeal under proviso to s.29(1) of the Courts Ordinance, 1948.

Evidence — Onus on defence — Need not satisfy jury on "balance of probabilities."

Where there was a body with five appalling wounds penetrating to the heart and liver, which must have been caused by violent blows with a heavy sharp instrument like an axe, then in the absence of anything else whoever inflicted those blows must have intended to kill the person on whom they were inflicted. In the absence of any evidence as to insanity, provocation or self-defence, the only question for the jury to consider was whether they were satisfied beyond reasonable doubt that it was the accused who inflicted the injuries. In such circumstances it would be quite adequate for the Judge merely to tell the jury that murder is the deliberate killing by one human being of another, that is killing with the intention to kill.

Per Curiam: That there was no miscarriage of justice within the meanings of the proviso to section 29(1) of the Courts Ordinance, 1948 in this case.

Observations on the onus of proof.

Obiter: In certain cases of homicide the evidence may be such that it becomes necessary to consider with very great care whether or not the intention with which the act was done does or does not come within the definitions of criminal intention set out in sections 299 and 300 of the Penal Code. In such cases it is necessary for the Judge to spell out with the greatest possible care such portions of sections 299 and 300 as may be appropriate so that the jury may be in no doubt as to the question to which they have to give answer.

Cases referred to:—

(1) *William Hampton's Case* 2 Cr. App. R. 274, 276.

(2) *Rex* v. *Meade* [1909] 1 K.B. 892, 898.

(3) *Oster-Ritter's Case* 32 Cr. App. R. 191, 194.

(4) *Woolmington* v. *The Director of Public Prosecutions* [1935] A.C. 462, 482.

COURT OF APPEAL (CRIMINAL).

David Marshall for the appellant.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Thomson C.J.: This appellant was tried before Adams J. and a jury at Johore Bahru for murder in contravention of section 302 of the Penal Code. He was convicted by a unanimous verdict of the jury and sentenced to death. Against that conviction he appealed and on 21st February, 1961, we dismissed his appeal. We intimated that we would state our reasons for doing so at a later stage.

The charge against the appellant was that on 7th September, 1960, at a house at No: 47/3 Jalan Dato Mohd. Ali, Endau, near Mersing, he murdered one Lim Bong How.

The deceased was employed as a fish packer and lived in a cubicle in the upstairs portion of No: 47/3 Jalan Dato Mohd. Ali, Endau. Nos: 47/2 and 47/3 are adjoining parts of a row of terraced shophouses in the street in question. Their upper storeys are divided and are reached by different staircases. The downstairs storey which is made up of a hall and a space for fish packing and storage is common to both. To get from the upstairs portion of No: 47/2 to the upstairs portion of No: 47/3 it is necessary to go down the one staircase then go through at least one doorway and then go up the other staircase.

Early in the morning of 7th September the deceased was found dead in the doorway of his cubicle. He had on his body five substantial incised wounds, three in front and two behind. Two of these had penetrated to the heart and one of them to the liver, both organs being badly damaged. All the injuries could have been caused by an axe which was found downstairs and which bore stains of what was found on subsequent examination to be human blood. The condition of the deceased's cubicle and of a camp-bed which was in it suggested that at least some of the injuries had been caused while the deceased was lying on his back on this bed.

It was the case for the prosecution that having regard to the appalling nature of the injuries they must have been inflicted with the intention of causing death and that these injuries had been inflicted by the appellant.

The appellant was employed by the same wholesale fish monger as was the deceased and lived in a cubicle in the upstairs portion of the premises at No: 47/2 Jalan Dato Mohd. Ali which have already been described. On the night of 6th September the two men were engaged in loading a fish lorry when they had a quarrel over their work as a result of which they almost came to blows and had to be held apart by force. Later they both retired to their sleeping places as did their fellow workers. Just before dawn a man Tan, who was sleeping in the next cubicle to the appellant at No: 47/2, was awakened by the sound of a door being opened or closed downstairs. He went downstairs and then upstairs in No: 47/3 and found the deceased lying dead as has been described. About the same time (both witnesses gave it as 5 a.m.) a man Wong, who also slept upstairs at No: 47/2, heard footsteps coming towards the appellant's sleeping place. He looked out and saw that these were the steps of the appellant who was wearing yellow trousers stained with what this witness thought was blood and what on later analysis proved to be human blood. About the same time another witness Ang, who slept next to the deceased at No: 47/3, was awakened just before daybreak by a noise as if something had fallen; something caused his door to open and he saw the dead body of the deceased.

Then one Chia, the employer of the appellant, the deceased and the prosecution witnesses, after describing the quarrel between the two men, said he was called about 5 a.m. by Tan. He went and saw the dead body of the deceased and later he saw the appellant downstairs who was wearing the yellow trousers stained with blood and had a conversation with him. That conversation was of such a nature as to entitle the jury, if they believed the witness' account of it, to regard it as an admission on the part of the appellant that he had killed the deceased.

Finally, the appellant was found on medical examination to have slight superficial injuries on his left leg and his abdomen which could have been accidentally self-inflicted while using an axe similar to the blood-stained axe found on the premises.

At the trial the appellant did not give evidence. He made an unsworn statement from the dock in which he said that on the night of 6th September he was not very well. He admitted that he had had a quarrel with the deceased but said that he went straight to bed after that. He knew nothing about the killing until his employer blamed him for it the next morning. He gave his own version of his conversation with his employer which was one that did not involve any admission of any sort on his part.

In the circumstances it was perhaps not surprising that the jury brought in a verdict of guilty.

The conviction was appealed against on a number of grounds. Some of these related to the admissibility of small pieces of evidence that could not possibly have affected the result of the trial in any way and others were complaints of minor misdirections on a number of points of little importance. None of these grounds were pressed upon us with any great force.

There were, however, two grounds of appeal which in our opinion called for more careful consideration.

In the first place it was said that some of the trial Judge's directions as to the law relating to murder were wrong. Here, we regret to have to say, the trial Judge seems to have been in some doubt as to whether or not he should deal

with the question of manslaughter and leave such an alternative verdict to the jury. In the end he did so in a rather half-hearted fashion. Here in our view he was wrong. Having regard to prosecution evidence and to the defence being a complete denial of all knowledge of the killing, the case was one of murder or nothing. No complaint has been made before us of the question of manslaughter having been thus left to the jury and, indeed, that course though wrong was one that was more favourable than it should have been to the defence. It was, however, his obvious irresolution as to whether or not to do so that to some extent coloured what the trial Judge had to say on the law relating to murder.

What he said was that homicide is the killing of a human being and can be either justifiable or culpable. It becomes culpable "if the act causing the death of a human being was done either with the intention of a causing death, or the intention of causing such bodily injury as would in the normal course of nature cause death, or, if the person doing the act did not intend to cause death, he knew that the act was likely either to cause death or such bodily injury as would in the ordinary course of nature cause death."

The passage quoted is presumably intended to state the effect of the provisions of section 299 of the Penal Code. That section reads as follows :—

> " Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

From a perusal of the section itself it is clear that the bodily injury which is intended must be such "as is likely to cause death" and not such "as would in the normal course of nature cause death". If there be any real difference here then the Judge's wording is of course more favourable to an accused person than that what is said in the section. Again, as an alternative to intention, section 299 requires knowledge on the part of the accused "that he is likely by such act to cause death" and not, as stated by the Judge, knowledge that he was likely to cause "such bodily injury as would in the ordinary course of nature cause death".

The Judge then went on to say that culpable homicide only becomes murder if the act which causes the death of a human being is done "with the intention of causing death or with the intention of causing such bodily injury as would in the normal course of nature cause death" and :

> " There is therefore a vital difference between doing an act which one knows is likely to cause death and doing an act with the intention of killing. The one is culpable homicide not amounting to murder, that is when it is done merely with the knowledge that it is likely to cause death, and the other, that is when it is done with the intention to kill or with the intention to cause such bodily injury as was likely to cause death, is murder."

Here, again, the statement is not accurate. The relevant portion of section 300 states in terms that where the act by which death is caused is done "with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused" then the killing is murder.

Finally, a little later the Judge said :—

> " If you consider that in doing what he did, the accused must, as an ordinary human being capable of reasoning, have contemplated that serious harm was likely to occur, then you may return a verdict that he is guilty of murder."

Again the statement is wrong. There is no need to labour the point but it is clear from the wording of section 300 that if the question of murder is to be approached from the standpoint of what an accused person must have contemplated then what he must have contemplated is not merely that serious harm was likely to occur but that death was likely to occur.

As was said by Lord Alverstone in the case of *William Hampton*[1], "a summing-up is not a dissertation upon the law." The same sort of thing was said by Darling J. in the case of *Rex* v. *Meade*[2] :—

> " when a Judge sums up to a jury he must not be taken to be indicting a treatise on the law. He addresses himself to the particular facts of the case then before the jury, and no Judge can affect, in those circumstances, to give an exhaustive definition, or one which applies to every conceivable case. It is enough if he gives a sufficient definition, and rightly directs the attention of the jury to the facts of the case before them."

Here I hope it is unnecessary to observe that if a Judge does disregard the counsel contained in these two passages and does indulge in a dissertation upon the law that dissertation should be a correct one. It is right to state the law or anything else rightly. It is wrong to state it wrongly. In the present case, however, there was very little need to discuss the law of murder at any length at all.

In all cases of homicide the question of the intention of the accused person in doing the act which is the cause of death, supposing such act is made out by the evidence, is of fundamental importance. In all cases that intention is something the existence and the nature of which are to be deduced from the evidence. In some cases the evidence may be such that it becomes necessary to consider with very great care whether or not the intention with which the act was done does or does not come within the definition of criminal intention set out in section 299 of the Code as being necessary to make the act out to be culpable homicide and whether it does or does not come within the definition of criminal intention set out in section 300 as being necessary to make the act out to be murder. In such cases it is necessary for the Judge to spell out with the greatest possible care such portions of sections 299 and 300 as may be appropriate

so that the jury may be in no doubt as to the question to which they have to give the answer.

The present, however, was not one of this class of case.

There was the body with five appalling wounds on it, wounds penetrating to the heart and liver, which must have been caused by violent blows with a heavy sharp instrument like an axe. In the absence of anything else, whoever inflicted those blows must have intended to kill the person on whom they were inflicted. There was no evidence as to the circumstances surrounding the killing. No question of insanity or provocation or self-defence or anything else was raised by the defence. There was not a scrap of evidence with which any such defence could be even remotely linked up. The only question for the jury to consider was whether they were satisfied beyond reasonable doubt that it was the appellant who inflicted the injuries. If they were so satisfied then it was their duty to say he was guilty of murder. If they were not so satisfied then it was their duty to say he was not guilty. In these circumstances it would have been quite adequate had the Judge merely told the jury that murder is the deliberate killing by one human being of another, that is killing with the intention to kill.

In all the circumstances, however, we were of the opinion that this was a case where we should apply the proviso to section 29(1) of the Courts Ordinance which says that while this Court may be of the opinion that the point raised in the appeal might be decided in favour of the appellant yet the appeal should be dismissed if the Court considers that no substantial miscarriage of justice has occurred. The proviso is the same as the proviso to section 4(1) of the Criminal Appeal Act, 1907, and as was said by Lord Goddard in the case of *Oster-Ritter*[3] that proviso can be applied where :

> "there is no reason to suppose that, even if a proper direction had been given, the jury would have come to any conclusion other than that to which they did come."

It was urged upon us by Mr. Marshall that the proviso has never been applied in England in a capital case. That is not quite right. The proviso was in fact applied in England by the Court of Criminal Appeal in the case of *Woolmington* v. *The Director of Public Prosecutions*[4] and in that case the House of Lords refused to follow the Court of Criminal Appeal on the point not because the case with which they were concerned was a capital one but because they did not think it was an appropriate one. The words of Viscount Sankey L.C. on the point are abundantly clear (at p. 482) :—

> "There is no doubt that there is ample jurisdiction to apply that proviso in a case of murder. The Act makes no distinction between a capital case and any other case, but we think it impossible to apply it in the present case. We cannot say that if the jury had been properly directed they would have inevitably come to the same conclusion."

In the present case we are satisfied, and satisfied beyond doubt, that if the jury had been properly directed they would have inevitably come to the same conclusion, that is to say that they would have found the appellant guilty of murder.

The other ground of appeal with which we must deal is that it is said that in the following passage the trial Judge gave wrong directions to the jury as to the onus which rested on the defence :—

> "If you are sure on the evidence produced by the prosecution that the accused did strike these blows, then there has been a *prima facie* case made out, and the defence must then satisfy you on the probabilities that the accused was in fact not there at all. There is a very big difference between the standard of proof required from the prosecution and from the defence. The prosecution must satisfy you so that you are morally certain that the accused is guilty. The accused is never called upon to prove his innocence; he is innocent until he is proved to be guilty. If he by reason of his explanation satisfies you that on the balance of probabilities he was not there, then you must give him the benefit of the doubt."

Considered in isolation that passage is not a happy one. To say that when an accused person denies something made out against him by the evidence for the prosecution he must satisfy the jury that "on the balance of probabilities" his denial should be accepted is tantamount to saying he must satisfy them that his denial is more likely than not to be true. And that of course is wrong.

It is for the prosecution to prove its case by evidence so that the jury are sure of the guilt of the accused person. If the accused person can either by anything he says himself in evidence or by pointing to any available piece of prosecution evidence make the jury feel less than sure then the case for the prosecution is not made out and the accused person is entitled to an acquittal. As was said by Viscount Sankey in *Woolmington's* case :

> "If the jury are either satisfied with his explanation or, upon a review of all the evidence, are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted."

In the present case, however, we think it would be wrong to say there was any real danger of the jury having been misled by the isolated passage in the summing-up which has been quoted. At the beginning of the summing-up they had been told that they had to be "morally

certain as any human being can be in this world that the accused is guilty of the offence before you can convict him." Towards the end they were told :

"If you accept his denial, or if you think that it raises a doubt in your minds on consideration of all the evidence, then you must give him the benefit of that doubt."

In the course of the summing-up they were told again and again that they must be sure and that they must be certain. In the event we are satisfied that when they retired they could have been under no misapprehension; they must have been well aware that if they were in any way less than sure as to the guilt of the appellant it was not open to them to find him guilty of murder.

Appeal dismissed.

Solicitors: *Marshall & Chung.*

YEW SENG TRADING CO. v. HARDIAL SINGH

[C.A. (Tan Ah Tah, Chua and Wee Chong Jin JJ.) March 15, 1961]

[Singapore — Civil Appeal No. 18 of 1960]

Landlord and Tenant — "Rent" — "Municipal services paid by tenant" — Control of Rent Ordinance, (Cap. 242), s.15(1)(g) — Construction of.

The main point to be decided in this appeal was whether upon a true construction of section 15(1)(g) in a case in which only the second limb is applicable municipal services paid by the tenant who had sub-let part of the premises should be taken into account in determining whether or not he receives in respect of such sub-letting rents which exceed in the aggregate 110% of the recoverable rent paid by him including the apportioned rental or value of any part of the premises retained by or not sublet by him.

Held: the word "rent" with the words "excluding any municipal services paid by the tenant" appearing in brackets in the first limb cannot properly or reasonably be supposed to have assigned to it by the legislature any different meaning from the same word in the second limb of the same paragraph.

COURT OF APPEAL.

A. P. Rajah for the appellants.

J. E. Lloyd for the respondent.

Wee Chong Jin J. (with whom **Tan Ah Tah** and **Chua JJ.** agreed): This appeal raises an interesting point on the construction of section 15(1)(g) of the Control of Rent Ordinance (Cap. 242) which provides as follows :—

15.—(1) In the case of all premises such an order or judgment as is referred to in section 14 of this Ordinance may be made in any of the following cases, namely:—

(g) where the tenant having sublet the premises or part thereof receives in respect of such subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him.

It will be seen that this paragraph contains two limbs and that the expression "excluding any municipal services paid by the tenant" appears in brackets in the first limb but not in the second limb. The point to be decided is whether upon the true construction of this paragraph in a case to which only the second limb is applicable municipal services paid by the tenant who has sublet part of the premises should be taken into account in determining whether or not he receives in respect of such subletting rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by him including the apportioned rental or value of any part of the premises retained by or not sublet by him. This point though raised at the trial was not dealt with by the learned trial Judge who found that the appellants had exceeded the limit imposed even assuming that the municipal services in fact paid by them should be taken into account.

During the hearing of the appeal it was conceded that if all the payments made by the appellants fall within the meaning of the word "rents" and should be taken into account they had not exceeded the limit imposed by this paragraph.

In my opinion, on normal canons of construction, it would appear to be unarguable that the words "excluding any municipal services paid by the tenant" which appear in the first limb but not in the second limb can be read into the second climb. Again, it seems on normal canons of construction that the word "rents" which appears in both limbs must have the same meaning and that the legislature in excluding from "rents" in the first limb any municipal services paid by the tenant and in not excluding from "rents" municipal services paid by the tenant in the second limb must by necessary implication be taken to have used the word "rents" wherever it appears in this paragraph as including municipal services paid by the tenant unless expressly excepted.

Mr. Rajah however contends that the word "rents," unless specifically defined in the Ordinance to include municipal services, must be given its common law meaning, and that whatever the common law meaning of rent may be, it does not include municipal services. He is however driven to admit that on this argument the words "excluding any municipal services paid by the tenant" which appear in the first limb have been included *ex abundanti cautela.*

I am unable to agree with Mr. Rajah's contention and am of the opinion that this paragraph must be construed in accordance with